

FEDERAL COMMUNICATIONS COMMISSION
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Market Disputes Resolution Division
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Re: *Flat Wireless, LLC v. Cellco Partnership dba Verizon Wireless*, EB Docket No. 15-147,
File No. EB-15-MD-005

Dear Counsel:

In this letter ruling, we address two pending motions and ask the parties to file an updated Joint Statement in an effort to resolve any remaining discovery disputes.

Motion to Accept Amended Interrogatories

On September 1, 2015, Complainant Flat Wireless, LLC (Flat) filed a motion seeking permission to amend its first set of interrogatories to add a new Interrogatory Number 8.¹ Defendant Cellco Partnership dba Verizon Wireless (Verizon) did not challenge Flat's right to amend its interrogatories. Rather, in the cover letter to its Answer, Verizon stated that it reserved the right to respond to the Motion to Amend "when and if the motion[] to accept the filing[] [is] granted by the Bureau."² Given that Flat filed the Motion to Amend a full two weeks before Verizon was required

¹ Motion to Accept Amended Interrogatories, EB Docket No. 15-147, File No. EB-15-MD-005 (filed Sept. 1, 2015) (Motion to Amend).

² Letter from Andre Lachance, Counsel, Verizon Wireless, to Marlene Dortch, Secretary, FCC (Sept. 15, 2015) (cover letter to Verizon Wireless Answer).

to respond to Flat's first set of interrogatories, and because Verizon did not file an opposition to Flat's request for leave to amend its interrogatories, we hereby grant the Motion to Amend.³

We note, however, that in filing the Motion to Amend, Flat did not comply with Commission rule 1.729, under which a requesting party is required to explain why the information sought is both relevant to a material fact in the case and necessary to the resolution of the parties' dispute.⁴ We therefore direct Flat to provide such explanation in an updated joint statement, to the extent required below.

Motion to Strike Singer Declaration and Verizon's Modified Opposition to Interrogatories

Contemporaneously with the filing of its Reply on October 19, 2015, Flat filed a motion to strike the Declaration of Dr. Hal Singer, which was appended to Verizon's October 9th Legal Analysis.⁵ Flat contends that the Singer Declaration should be stricken in its entirety from the record inasmuch as it introduced "new and untimely facts into the record" in contravention of the rules and procedures governing this case.⁶ Flat also contends that, by including cross-references to Verizon's Legal Analysis and to the Singer Declaration, Verizon's modified Opposition to Interrogatories improperly relies upon new facts and information.⁷ On that basis, Flat argues that Verizon's modified Opposition to Interrogatories also should be stricken from the record.⁸

Contrary to Flat's assertion, however, it does not appear that the Singer Declaration improperly introduced new facts into the record of this case. Rather, the declaration relies upon facts that were previously introduced in the Answer as well as publicly available facts.⁹ We note that it is

³ 47 CFR § 1.729(h) ("The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories.").

⁴ 47 CFR § 1.729(a) ("Requests for interrogatories . . . may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute . . ."), (b) ("Requests for interrogatories . . . shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is [] necessary to the resolution of the dispute . . .").

⁵ Motion to Strike Singer Declaration and Modified Version of Verizon's Opposition to Interrogatories, EB Docket No. 15-147, File No. EB-15-MD-005 (filed Oct. 19, 2015) (Motion to Strike). On September 1 and September 16, 2015, the parties filed joint motions to revise the schedule in this case such that Verizon's Answer would be filed on September 15th, Verizon's Legal Analysis would be filed separately on October 9th, and Flat's Reply would be filed on October 19th. See Joint Motion to Revise Scheduling Order, EB Docket No. 15-147, File No. EB-15-MD-005 (filed Sept. 1, 2015) (grant stamped); Joint Motion to Revise Scheduling Order and Consent to Amended Complaint, EB Docket No. 15-147, File No. EB-15-MD-005 (filed Sept. 16, 2015) (grant stamped).

⁶ Motion to Strike at 2-3. See also *id.* at 1 ("[T]he Singer Declaration is not legal analysis but rather constitutes entirely new evidence which was required to be filed in Verizon's Answer no later than September 15, 2015.").

⁷ *Id.* at 3-4.

⁸ *Id.*

⁹ Accord Verizon's Opposition to Motion to Strike, EB Docket No. 15-147, File No. EB-15-MD-005 at 3 (filed Oct. 23, 2015) (Verizon Opposition) ("The Singer Declaration is an economic analysis submitted in support of Verizon's Legal Analysis and it relies entirely on facts in the record or facts that are publicly available.").

standard practice for parties to formal complaint proceedings to attach expert reports opining on issues in dispute. Having found no violation of our rules and in the interest of ensuring a complete analysis and presentation of the issues raised in this proceeding, we deny Flat's Motion to Strike the Singer Declaration. For the same reasons, we deny Flat's request to strike Verizon's modified Opposition to Interrogatories. Because the modified version, in referencing Verizon's Legal Analysis and/or the Singer Declaration, did not introduce new facts into the record, we deny the Motion to Strike Verizon's Modified Opposition to Interrogatories.

Finally, in an effort to address Flat's concern that it was afforded insufficient time under the pleading schedule to address Verizon's Legal Analysis and the Singer Declaration, we hereby grant Flat leave to file a response to the Singer Declaration.¹⁰

Disputed Discovery Requests

Based on our review of the parties' Joint Statement, it appears that there remain a number of disagreements between the parties with respect to discovery.¹¹ In an effort to narrow these discovery disputes, we suggest that Flat provide Verizon a list of the information and documents requested to which Verizon objects, including the information requested in Flat's proposed amended interrogatory, along with an explanation demonstrating the relevance of such information to the material issues in this case and the necessity of such information to the resolution of this dispute. We urge Flat to narrow its requests in an effort to ensure that they are sufficiently tailored to elicit relevant information, as required by the Commission's formal complaint rules.¹² Should Verizon have any outstanding discovery requests to which Flat has objected, we direct the parties to follow the same process. We ask that the parties confer and seek to agree on a sufficiently narrow set of discovery requests.

After conferring in an effort to resolve discovery disputes, we direct the parties to file an updated Joint Statement delineating any remaining discovery issues and the parties' positions on each (including an explanation of the relevance of the information requested, and the basis for the opposing party's opposition). The updated Joint Statement also should include a proposed date for Flat's response to the Singer Declaration. The Joint Statement shall be filed **by February 5, 2016**.

¹⁰ Motion to Strike at 3.

¹¹ Letter from Donald Evans, Counsel for Flat Wireless, and Andre Lachance, Counsel for Verizon Wireless, to Marlene Dortch, Secretary, FCC at 1 (Oct. 30, 2015) (cover letter to Joint Statement).

¹² See, e.g., 47 CFR § 1.729.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3, 20.12(e)(2), and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 20.12(e)(2), 1.720-1.736, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, and 0.311.

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